

Message

From: Stoker, Michael B. [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DCB64B4E7EDF48AABE8EF43996A4652E-STOKER, MIC]
Sent: 3/5/2019 2:01:29 AM
To: Quast, Sylvia [Quast.Sylvia@epa.gov]
CC: Strauss, Alexis [Strauss.Alexis@epa.gov]; Munoz, Charles [munoz.charles@epa.gov]
Subject: Re: Rosemont Mine application, Arizona

Good with me Sylvia. Thx.

Michael Stoker
EPA Regional Administrator-Region 9
Cell Personal Matters / Ex. 6

On Mar 4, 2019, at 5:50 PM, Quast, Sylvia <Quast.Sylvia@epa.gov> wrote:

ATTORNEY-CLIENT PRIVILEGED AND WORK PRODUCT; DO NOT RELEASE UNDER FOUA

Attorney Work Product / Attorney Client / Deliberative Ex. 5

Sent from my iPhone

On Mar 4, 2019, at 6:25 PM, Stoker, Michael B. <stoker.michael@epa.gov> wrote:

Sylvia,
Remember to have someone in your office respond to this and copy me.

Michael Stoker
EPA Regional Administrator-Region 9
Cell Personal Matters / Ex. 6

Begin forwarded message:

From: Stu Gillespie <sgillespie@earthjustice.org>
Date: March 1, 2019 at 1:58:24 PM PST
To: "stoker.michael@epa.gov" <stoker.michael@epa.gov>
Cc: Heidi McIntosh <hmcintosh@earthjustice.org>
Subject: FW: Rosemont Mine application, Arizona

Dear Mr. Stoker –

I appreciated the opportunity to briefly speak with you over the phone. I realize that you were travelling, and thus have followed up with my concerns (as you instructed) in the email below.

I represent the Tohono O’odham Nation, Pascua Yaqui Tribe, and Hopi Tribe in regards to the proposed Rosemont open-pit copper mine that would be located on the Tribes’ ancestral homelands in the Santa Rita Mountains near Tucson, Arizona. Late yesterday evening, you informed the Tribes that you did not plan to exercise your authority to elevate the U.S. Army Corps’ decision to grant a 404 permit for the mine for EPA Headquarters’ level review. If you do not exercise your authority to elevate the permit, the Corps can promptly issue the permit to Rosemont, resulting in significant adverse impacts to aquatic resources and profoundly impacting historic resources of deep cultural, religious, and spiritual importance to the Tribes.

The Tribes respectfully request the opportunity for meaningful government-to-government consultation with you regarding this monumental decision. Section 106 of the National Historic Preservation Act (NHPA) imposes an obligation on federal agencies to consult with tribal nations before a decision is made on a federal undertaking. See *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 805 (9th Cir. 1999). The purpose of consultation with Indian tribes under the NHPA is to ensure that all types of historic properties and all public interests in such properties are given due consideration. See *Te-Moak Tribe v. U.S. Dep’t of Interior*, 608 F.3d 592, 609 (9th Cir. 2010). The EPA acknowledges its trust obligations to tribes and the need for meaningful consultation to “assure that tribal concerns and interests are considered *whenever* EPA’s actions and/or decisions may affect” tribes. See EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), 2 (emphasis added).

You have not, however, engaged in any consultation with tribal leaders regarding your decision to not elevate the 404 Permit for higher review. Your email yesterday evening was too little too late. It did not provide tribal leaders with an opportunity to respond, let alone engage in consultation. Indeed, your email suggests that you had made your decision, before even reaching out to the tribes. I thus respectfully request that you seek an extension of time to the 15-day period to review the proposed permit so that you can meaningfully consult with tribal leaders regarding the significant impacts of the proposed Rosemont mine on aquatic, cultural, religious, spiritual, and historic

properties. This consultation process is essential to determine whether or not to elevate the permit, which could result in the EPA denying, restricting, or withdrawing the proposed disposal site for dredge and fill material.

I look forward to your prompt response regarding this critical and time-sensitive matter.

Sincerely,
Stuart Gillespie

From: "Strauss, Alexis"
<Strauss.Alexis@epa.gov>
Date: February 28, 2019 at 7:21:10 PM
EST
To: "Stephen.Lewis@gric.nsn.us"
<Stephen.Lewis@gric.nsn.us>,
"robert.valencia@pascuayaqui-nsn.gov"
<robert.valencia@pascuayaqui-nsn.gov>, **Personal Matters / Ex. 6**
Personal Matters / Ex. 6 "jRussell-
winiecki@yan-tribe.org" <jRussell-
winiecki@yan-tribe.org>, "bball@ak-
chin.nsn.us" <bball@ak-chin.nsn.us>,
"Dale.Ohnmeiss.DEQ@gric.nsn.us"
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"stautolo@pascuayaqui-nsn.gov"
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<christopher.horan@srpmic-nsn.gov>,
"loretta.stone@scat-nsn.gov"
<loretta.stone@scat-nsn.gov>,
"cornelius.antone@tonation-nsn.gov"
<cornelius.antone@tonation-nsn.gov>,
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"jennifer.heminokeky@fortsillapache-
nsn.gov"
<jennifer.heminokeky@fortsillapache-
nsn.gov>, "thora@mescalero-rmp.org"
<thora@mescalero-rmp.org>,
"tammy.parker@ashiwi.org"
<tammy.parker@ashiwi.org>
Cc: "Stoker, Michael B."
<stoker.michael@epa.gov>, "Munoz,
Charles" <munoz.charles@epa.gov>

**Subject: Rosemont Mine application,
Arizona**

Dear Governor Lewis, Chairman
Valencia, Chairperson Rambler,
Chairwoman Russell-Winiecki, and
Tribal EPA Directors Ball, Ohnmeiss,
Honyupmtewa, Tautolo, Horan, Stone,
Antone, Pusher-Begay, Lewis,
Heminokeky, Padilla and Parker,

As Regional Administrator, I send you
my respectful greeting, and regret the
need to reach you in this more
impersonal manner. I am presently
away from the Regional Office, but
wanted to convey some time-sensitive
information. Our US EPA Regional
Office has received from the U S Army
Corps of Engineers its Notice Of Intent
to issue a Clean Water Act permit for
the proposed Rosemont Mine in
Arizona.

I'm addressing this to you as in prior
years the U. S. Forest Service had
consulted with the twelve tribal
governments listed here as it prepared
an Environmental Impact Statement for
this proposal. Per a 1992
Memorandum of Agreement (MOA)
between the EPA and Army Corps
regarding Clean Water Act permitting,
EPA is given 15 days to review the
proposed permit. I have decided not to
elevate this matter for further review.

I am providing you with this update
today given the brief time provided to
EPA in the above-noted MOA. Should
you wish to discuss this further, please
call me at (213) 215-3104, or email me
at stoker.michael@epa.gov and we can
set up a mutually convenient time to
talk.

Sincerely yours,
Mike Stoker

Michael Stoker
Regional Administrator
E.P.A. Region 9
75 Hawthorne Street

San Francisco, CA 94105